

SV-50514

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION AT OXFORD

DUNAVANT ENTERPRISES, INC.,
and CENTRAL STATES INVESTMENT CO.,

PLAINTIFFS

v.

Case No. 2:08-CV-005-M-A

DESOTO COUNTY SCHOOL BOARD
OF EDUCATION, and MILTON KUYKENDALL,
In his official capacity as Superintendent of the
DeSoto County School Board of Education,

DEFENDANTS/
THIRD-PARTY PLAINTIFFS

v.

ALLEN & HOSHALL, INC.,

THIRD-PARTY DEFENDANT

**JOINT MOTION TO CONTINUE CASE FOR TRIAL
AND TO EXTEND DISCOVERY DEADLINES**

Come now the parties, by and through their counsel of record, and respectfully move this Honorable Court to reset this case for trial and to extend the current discovery deadlines. In support of this motion, counsel for the parties would state unto the Court as follows:

1. On April 3, 2008, this Court entered a Case Management Order establishing certain discovery deadlines. At that time, the case was set on a standard case track. The attorney for the original named defendants advised the Court that his clients were contemplating filing a Third Party action adding a third party defendant but a final decision had not been made at the time of the status conference before Magistrate Judge Allen. A deadline for filing a motion to add additional parties was set for June 2, 2008. Subsequently, the defendants filed a motion to add Allen & Hoshall, Inc. as a third-party defendant.

2. On June 23, 2008, the defendants filed a Third-Party Complaint against Allen & Hoshall, Inc. The Third-Party Defendant served its Answer on July 14, 2008 and served its Rule 26 Initial Disclosures on adverse counsel on or about September 30, 2008.

3. Since the Third-Party Defendant was added to this litigation, all parties have attempted to provide initial disclosures and have supplemented their initial disclosures and cooperated with discovery.

4. Plaintiffs' counsel has recently provided to adversary counsel a voluminous, detailed, final report from its engineering expert, ETI, setting forth the 100 year storm water surface elevations upon the plaintiffs' property and the adverse affects on the plaintiffs' property by the development of the subject School Board property. Counsel for the original named defendants and the third-party defendant have indicated that their experts are or will be reviewing said ETI final report.

5. In addition, counsel for the parties would state that after the issues arose which formed the basis of this lawsuit, the DeSoto County Board of Supervisors and the City of Olive Branch commissioned the engineering firm of Neel-Schaffer, Inc. to perform an engineering hydrologic and hydraulic analysis of the subject basin, including the real property which is the subject of the instant lawsuit. Said report was not completed by the Neel-Schaffer, Inc. firm until on or about October 22, 2008. A copy of said report was first obtained by a representative for the plaintiffs within the latter part of December, 2008. A copy of said report was subsequently provided to counsel for the defendants and the third party defendant. The parties submit that said Neel-Schaffer report is now being analyzed by engineering experts for all of the parties.

6. Furthermore, counsel for all parties request that in addition to obtaining a resetting of the trial date, that the discovery deadline to identify experts and complete depositions of the fact witnesses be extended to allow the parties the opportunity to have the most recent ETI report and the Neel-Schaffer report reviewed and examined by potential experts.

7. Following the recent round of depositions last week, the parties agreed to submit the matter to mediation after completion of the expert depositions. Because of a conflict with his schedule, the plaintiffs' counsel is not available for mediation until the first or second week of May, at the earliest.

8. Further, counsel for the plaintiffs is set to begin a lengthy, several-week trial on Monday, February 23, 2009, involving the defense of a priest in a sex abuse trial. Final preparations and discovery matters pertaining to that trial are scheduled to take up the plaintiffs' counsel's time for the three to four weeks leading up to the trial and the trial is estimated to last three weeks.

9. Counsel for the parties have consulted and believe a resetting of the present trial date and an extension of the current discovery deadlines are necessary to provide all parties adequate time to complete the discovery of the fact and expert witnesses and to be in a position to properly submit the matter for mediation.

10. Accordingly, the parties hereby jointly move this Court to reset this case for trial and to extend the existing discovery deadlines so as to allow the parties sufficient time to complete discovery and submit the matter to mediation.

WHEREFORE, PREMISES CONSIDERED, the parties hereby jointly move this Court to reset this case for trial and for an order extending the case management discovery deadlines previously entered on November 17, 2008.

Respectfully Submitted,

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